

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 CV 1591

JUDGE WOODS

GEOFFREY KENWORTH WALTERS,

Plaintiff,

-against-

COMPLAINT

Jeh C. Johnson, Secretary of the Department

of Homeland Security, and **Lori Scialabba**,

District Director of the New York District of the United

States Citizenship and Immigration Services,

Eric H. Holder, Attorney General.

Defendants.

X

Plaintiff herein, through his attorneys, COHEN & LEAVITT, P.C., respectfully alleges:

1. Plaintiff resides at 3906 Harper Avenue, Apt. 1A, Bronx, NY 10466.

JURISDICTION

2. This is an action pursuant to Sections 310(c) and 336 of the Immigration and Nationality Act, in accordance with Chapter 7 of Title 5, United States Code, 8 CFR 336.9, seeking court review of the decision of the District Director of the United States Citizenship and Immigration Services (hereinafter USCIS), New York District, dated September 16, 2014, denying the Plaintiff's Application for Naturalization, Form N-400.

VENUE

3. The Plaintiff has lived in the Bronx, New York, since July 2003, and the U.S. Citizenship and Immigration Service (hereinafter USCIS), with which the Plaintiff filed an N-400 Application for Naturalization, maintains its District Headquarters in New York, New York.

4. USCIS interviewed the Plaintiff on his N-400 Application at the District Office of USCIS located in New York, New York.

5. Thus, venue in the Southern District of New York is proper.

STATEMENT OF FACTS

6. The Plaintiff became a lawful permanent resident of the United States on February 27, 1989. His Alien Registration Number is 029-065-978.

7. The Plaintiff applied for naturalization on or about October 1, 2010.

8. The Defendant interviewed the Plaintiff on his naturalization application at 26 Federal Plaza, New York, New York, on March 15, 2011.

9. The Defendant interviewed the Plaintiff for the second time on August 19, 2011.

10. By a decision dated September 28, 2011, the Defendant denied the Plaintiff's naturalization application.

11. On October 20, 2011, the Plaintiff filed Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings under Section 336 of the Act, with USCIS.

12. The Defendant conducted a hearing on this request on September 16, 2014, at its offices at 26 Federal Plaza, New York, New York.

13. On or about November 10, 2014, the Defendant again denied the Plaintiff's naturalization application.

14. The decision of the Defendant is factually erroneous and represents an abuse of discretion. The decision states that the Plaintiff was arrested for Unlawful Transfer of Marijuana in excess of 9 lbs. on September 15, 1990 and pled guilty to this charge on June 19, 1991. This conviction for illicit trafficking in a controlled substance constitutes an aggravated felony as defined in INA 101(a)(43)(B). Defendant's decision further states any applicant for naturalization who was convicted of an aggravated felony after November 29, 1990 cannot satisfy the good moral character requirement for naturalization.

15. However, the Defendant fails to consider that on December 21, 1993, the Plaintiff's probation was terminated, his civil rights were restored, and the judgment and conviction in his case was set aside and vacated by Honorable Howard Hantman, Judge Pro Tempore, Pima County Superior Court of the State of Arizona.

16. Plaintiff provided the Defendant with copies of the judge's order and the summary of his evaluation. Nevertheless, the Defendant failed to acknowledge the Plaintiff's evidence proving that his conviction was vacated. The Plaintiff established that he now possesses the requisite good character to merit favorable consideration of his application for naturalization. The Defendant's denial of this application constitutes an abuse of discretion.

15. Plaintiff has exhausted his administrative remedies regarding his application for naturalization.

WHEREFORE, the Plaintiff respectfully requests that:

- (a) This Court review this matter de novo and make its own findings of fact and conclusions of law; and
- (b) Conduct a hearing de novo on the application; and
- (c) Grant the Plaintiff's Application for Naturalization; and
- (d) For such other and further relief as may be just and proper.

Dated: February 26, 2015
New York, New York


COHEN & LEAVITT, P.C.
By: MICHAEL L. LEAVITT, ESQ.
277 Broadway – Suite 400
Tel: (212) 267-2321
Fax: (212) 227-7140
michaelleavittesq@yahoo.com

AFFIRMATION OF SERVICE

I, Michael L. Leavitt, Esq. declare that I am an attorney of Cohen & Leavitt P.C. and our firm represents the Plaintiff in this matter before this Honorable Court. I affirm that I served a true copy of the *Complaint by priority* delivery to:

Jeh C. Johnson

U. S. Department of Homeland Security
Office of the General Counsel
U. S. Department of Homeland Security
Washington, D.C. 20258

Lori Scialabba

U. S. Citizenship and Immigration Services
425 Eye St. NW
Washington D.C. 20536

Eric Himpton Holder, Jr.

Attorney General
U. S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Robert S. Mueller, III

Director of Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Attorney's for the above Defendants

United States Attorney for the Southern District of New York
Civil Division
86 Chambers Street
New York, NY 10007



Michael L. Leavitt, Esq.
Cohen & Leavitt, P.C.
277 Broadway, Suite 400
New York, NY 10007

Dated: March 4, 2015